



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200925049

UIL No. 402.07-00

MAR 23 2009

Legend:

SE: T: EP: RA: T4

Employer A =

Plan X =

Plan Y =

Plan Z =

State A =

Date 1 =

Dear:

This is in response to your letter dated June 3, 2008, submitted on your behalf by your authorized representative, in which your request a ruling concerning the application of sections 402 and 401(a) of the Internal Revenue Code (the "Code"). Under penalty of perjury, the following facts and representations have been submitted in support of the ruling request.

Employer A is a tax exempt corporation under section 501(c)(3) of the Code. Employer A maintains Plan X for employees of its participating employers. Plan X is a pension plan within the meaning of section 1.401-1(b)(1)(i) of the Income Tax Regulations (the "Regulations"). On Date 1, the Internal Revenue Service issued a favorable determination letter on the qualified status of Plan X.

Under the terms of Plan X, participants are provided a choice of distribution options, including a one-time election to receive an immediate, single sum payment equal to the current value of the employee's vested accrued benefit upon termination of employment.

Employer A also maintains Plan Y, a profit sharing plan within the meaning of section 1.401-1(b)(1)(ii) of the Regulations that includes a cash or deferred arrangement qualified under section 401(k) of the Code. On Date 1, the Service issued a favorable determination letter on the qualified status of Plan Y.

Plan Y permits a Plan participant (or an employee who is expected to become a participant) to establish a separate "rollover contribution account" to which he or she may contribute an "eligible rollover distribution," as the term is defined in the Plan document. The Plan definition is intended to conform to the requirements of sections 401(a)(31) and 402(c)(4) of the Code.

Plan Y defines a "Participant" as any employee who is not an excluded employee who has satisfied all of the age and service requirements of [the Plan]..."

Plan Y defines a "Former Participant" as "an individual who is no longer an Employee due to having incurred a termination of employment, but who retains and is entitled to receive an accrued benefit under the Plan."

Finally, Employer A maintains Plan Z which allows employee deferrals and benefits under section 403(b)(7) of the Code. Plan Z provides for lump sum distributions to participants.

Based on these facts and representations, the following rulings are requested:

1. That a direct trustee-to-trustee transfer under section 401(a)(31) of the Code of an eligible rollover distribution to Plan Y from either Plan X or Plan Z, by a "former participant" will not create a taxable event for such former participant under section 402 of the Code;

2. That a rollover contribution or direct trustee-to-trustee transfer under section 401(a)(31) of the Code to Plan Y of an eligible rollover distribution from an IRA or another qualified plan or 403(b) plan, held in the name of or for the benefit of a "former participant" that involves only proceeds received by the IRA or other qualified plan or 403(b) plan from Plans X, Y or Z, and the earnings thereon, will not create a taxable event for such former participant under section 402 of the Code;

3. That acceptance of any transfer or rollover contribution described above will not cause a loss of qualified status for Plan Y under section 401(a) of the Code.

With respect to ruling requests one and two, Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Section 72(t) of the Code provides for an additional tax on any amount received from a "qualified retirement plan" (as defined in section 4974(c), which includes plans described in section 401(a)). The additional tax for the taxable year in which such amount is received is equal to 10 percent of the portion of such amount which is includible in gross income, except where such income is distributed on or after an employee attains the age of 59 1/2, or on account of one or more exceptions provided for under section 72(t)(2) of the Code.

Section 401(a) of the Code provides that a trust created or organized in the United States and forming part of a qualified stock bonus, pension, or profit sharing plan of an employer constitutes a qualified trust only if the various requirements set out in 401(a) are met.

Rev Rul. 67-213, 1967-2 C.B. 149, involves the transfer of funds directly from the trust forming part of a qualified pension plan to the trust forming part of a qualified stock bonus plan. The revenue ruling provides, in part, that if a participant's interest in a qualified plan is transferred from the trust forming part of that plan to the trust forming part of another qualified plan without being made available to the participant, no taxable income will be recognized by reason of such transfer.

Section 401(a)(31)(A) of the Code provides in general that a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution elects to have such distribution paid directly to an eligible retirement plan, and specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(D) of the Code states that, for purposes of this paragraph, the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions. However, section 1.401(a)(31)-1, Q & A-2, of the regulations states, in pertinent part, that a plan is permitted, at a participant's election, to make a direct rollover to any type of retirement plan, as defined in section 402(c)(8)(B) (including a defined benefit plan).

Section 402(c)(8)(B) of the Code states, in pertinent part, that the term "eligible retirement plan" means –

- (i) an individual retirement account described in section 408(a),
- (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),
- (iii) a qualified trust,
- (iv) an annuity plan described in section 403(a),

- (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and
- (vi) an annuity contract described in section 403(b).

Section 402(c)(1) of the Code provides that if (A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, (B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and (C) in the case of a distribution of property other than money, the amount so transferred consists of the property transferred, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(4) of the Code provides that, for purposes of this subsection, the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, with certain exceptions for substantially equal periodic payments, required minimum distributions, and hardship distributions.

Section 402(c)(3)(A) of the Code generally provides that the rollover described in section 402(c)(1) must occur no later than 60 days after the day on which the distributee received the property distributed, subject to the hardship exception described in subparagraph (B).

Section 402(c)(5) of the Code provides that a transfer to an IRA resulting in any portion of a distribution being excluded from income under section 402(c)(1) shall be treated as a rollover contribution described in Code section 408(d)(3).

Section 408(d)(3)(A)(ii) of the Code defines a distribution from a "conduit" IRA eligible to be rolled over into a section 401(a) qualified plan as a distribution from an IRA in which no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contributions), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day after the day on which the individual receives the payment or distribution.

With respect to ruling request one, Plans X and Z provides that participants can request a rollover in the form of a direct trustee-to-trustee transfer to an eligible retirement plan. Plan Y is an eligible retirement plan within the meaning of section 402(c)(8)(B), and it provides that it accepts eligible rollover distributions.

Accordingly, we conclude that a direct trustee-to-trustee transfer pursuant to section 401(a)(31) of the Code of an eligible rollover distribution from Plan X or Plan Z to Plan Y at the request of a former participant (as defined in Plan Y) will not create a taxable event for such former participant under section 402 of the Code, to the extent that it is otherwise an eligible rollover distribution and the requirements of section 402(c) are met.

Similarly, with respect to ruling request two, because Plan Y provides for the establishment of rollover contribution account, amounts may be rolled over from another qualified plan, a 403(b) plan or a an IRA, including a "conduit" IRA, to Plan Y by a participant or former participant (as defined in Plan Y), provided the amount rolled over is otherwise an eligible rollover distribution within the meaning of sections 402(c)(4) and 408(d)(3) of the Code.

Accordingly, we conclude that a rollover contribution or direct trustee-to-trustee transfer under section 401(a)(31) of the Code to Plan Y of an eligible rollover distribution from an IRA or another qualified plan or 403(b) plan, held in the name of or for the benefit of the former participant (as defined in Plan Y) that involves only proceeds received by the IRA or other qualified plan or 403(b) plan from Plans X, Y or Z, and the earnings thereon, will not create a taxable event for such former participant under section 402 of the Code, to the extent that it is otherwise an eligible rollover distribution and the requirements of section 402(c) are met.

With respect to ruling request three, section 6.03 of Revenue Procedure 2009-4, 2009-1 IRB 121, provides that the Employee Plans Technical office ordinarily will not issue letter rulings on matters involving a plan's qualified status under sections 401 through 420 of the Code and section 4975(e)(7) of the Code, and that matters involving a plan's qualified status are generally handled by the Employee Plans Determination program as provided in Rev. Proc. 2008-6 of 2008-1 IRB 192, Rev. Proc. 93-10, and Rev. Proc. 93-12.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

200925049

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at (202) ***. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

A handwritten signature in cursive script, reading "Donzell Littlejohn".

Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: